

RAYMOND KUBICKI
 Claimant
 VS.
JOHNSON CONTROLS
 Respondent
 AND
KEMPER INSURANCE COMPANY
 Insurance Carrier
 AND
WORKERS COMPENSATION FUND
 Fund

Docket No. 173,439

The Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

The ALJ denied the claimant's request for post-award medical benefits stating the following:

The preponderance of the evidence failed to prove that left knee arthroplasty is medical treatment to cure and relieve the effects of the 1992 ACL tear. Too many years and other injuries have intervened, and contributed to the need for arthroplasty.¹

The claimant requests review of this decision and alleges that his present need for a left knee arthroplasty is a natural and probable consequence of his December 11, 1992 injury. Accordingly, claimant believes the ALJ's denial of the request for Post-Award Medical should be reversed and claimant should be granted the treatment outlined by Dr. Browne in the form a total left knee replacement.

Respondent contends the ALJ's decision should be affirmed as "[t]he overwhelming weight of the evidence supports that the [c]laimant has sustained a number of injuries prior and subsequent to the accident of December 11, 1992, and that these accidents have aggravated, accelerated and intensified the need for the [c]laimant's current need for medical treatment to his left knee"², and so it cannot be said that a knee replacement is needed because of an accident back in 1992. The Fund joins in respondent's arguments in this matter.

The sole issue presented in this appeal is whether claimant is entitled to additional medical care and treatment for his left knee as a result of his December 11, 1992 injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs, the Board makes the following findings of fact and conclusions of law:

Claimant sustained a compensable injury on December 11, 1992 to his left knee. That injury was the subject of a workers compensation claim that was ultimately settled on March 28, 1994. Pursuant to the parties' agreement, all issues remained "open" and subject to future requests. The parties also agreed that the Fund was responsible for 75 percent of claimant's future benefits, including medical expenses while the respondent would be responsible for the remaining 25 percent.

¹ ALJ Award (Aug. 4, 2006) at 4.

² Respondent's Brief at 8 (filed Aug. 24, 2006).

The facts surrounding the pending issue are, for the most part, undisputed and set forth in some detail by the ALJ. Accordingly, the Board adopts the ALJ's recitation of the underlying facts as its own.

Distilled to its simplest terms, claimant has a bad left knee. He had 4 surgeries to his knee in the 1980's. Then, in 1992 he tore his ACL and required a surgical repair which was performed by Dr. John Browne. This injury is the basis for the pending claim.

Claimant maintains that his left knee has never been pain-free since this 1992 accident. He did, however, have a period of time from 1993 to 1998 when he worked without incident and had no medical treatment for his knee complaints. Claimant went on to work for other employers and these jobs required him to stand on his feet for as much as 75 percent of the day.

Then, in 1998, the claimant sustained another accident when he caught his left foot in some grating, causing his knee to hyperextend. This accident took him back to Dr. Browne who, after a period of conservative treatment, released him to return to work.

In 2002, claimant had yet another accident, this time at home. As he arose from the couch, he felt a snap and a pop followed by pain in his left knee. Claimant sought treatment for these complaints and ultimately underwent an arthroscopic procedure to remove a loose body in June 2002.

Claimant had another incident on September 28, 2004 when he fell or stepped down from a ladder. In this accident he again injured his left knee and sought treatment with Dr. Jeffrey Randall. Dr. Randall opined that claimant requires a total knee replacement based upon his diagnosis of end stage degenerative joint disease.

There is no dispute that claimant requires a total knee replacement based upon end stage degenerative joint disease. There is likewise no dispute that claimant had a significant pre-existing history of left knee problems and since 1992 has had no less than 3 acute injuries to that same knee. Claimant has testified that his knee has gradually worsened, but specifically within the past year it has "gone downhill badly".³

Dr. John Browne has treated the claimant off and on for knee problems since the mid-1980's. At claimant's last visit with Dr. Browne on January 9, 2006, claimant noted an increase in discomfort from May of 2005. Dr. Browne felt that claimant's complaints of pain and discomfort had reached the point of an end-stage arthritic condition to the knee.⁴ He testified the claimant has had a series of traumatic injuries to his left knee over a period of

³ P.A.H. Trans. at 14.

⁴ Browne Depo. at 10.

time, and as a result of those traumatic injuries the claimant will eventually need to have the joint in his knee replaced⁵, but that all nonoperative options should be considered first. Dr. Browne stated that the primary reason that the claimant needs a knee replacement is the injury that caused the ACL tear, which happened in 1992 while the claimant was working for respondent.⁶

Dr. Browne was asked to expound on the importance of the intervening events and whether those injuries led to claimant's need for knee replacement change. He responded as follows:

A. Well, the description of these injuries assuming that they are as they are, I did say for the injury in 1998 and then subsequently we've released him from care in April of '99 and I don't think that injury was of major problem. I actually saw that, observed that. The other two injuries ascribing or certainly by description do not sound as though he had significant knee translation injury where he tore his ligaments and disrupted the integrity of the joint. Now, the second injury mentioned here on a couch watching TV and rising up and hearing a snap or a pop, that would be an unusual cause that somebody could have such damage from that they would require a knee replacement from such an injury. The third injury, coming down a ladder with the knee giving out, potentially you could tear a ligament somehow causing that, but generally you would have quite a bit of medical care and evaluation if you had such an injury.⁷

. . .

A. My feeling is is that the --my care for him, the most significant injury he had was in 1992 with the subsequent ACL surgery in 1993. And someone who has that type of surgery is at risk as his life goes on that their knee is not a normal knee and that they are at risk for having further potential functional deterioration [of] the joint.⁸

Dr. Jeffrey Randall first saw the claimant in May of 2002 in connection with his incident at home when getting up from the couch. Dr. Randall noted that claimant has had multiple issues and recent injuries of the left knee. After an MRI of the left knee, Dr. Randall performed surgery on the knee on June 11, 2002 to remove a loose body. Dr.

⁵ *Id.* at 11-12.

⁶ *Id.* at 14.

⁷ *Id.* at 15.

⁸ *Id.* at 18-19.

Randall also treated the marked degenerative changes that he found at the time of the surgery and released the claimant on July 19, 2002.⁹

Claimant came back to see Dr. Randall on September 30, 2002 complaining of continued pain, and was given Synvisc injections. He did not return until April 2004, again for continued pain in the left knee. On June 2, 2004, claimant returned for a fifth injection and then did not return until October 15, 2004 when he came in stating that he was injured on September 28, 2004 while climbing a ladder. Dr. Randall opined at that time that the claimant sprained his medial collateral ligament and had a deficiency of his anterior cruciate ligament and may have reinjured that area as well.¹⁰

At his final visit on December 9, 2005, Dr. Randall opined the claimant was at the end stage of degenerative joint disease of the left knee, and felt that the claimant got to that point due to years of chronic pain and problems with the knee. Dr. Randall testified that having a chronic condition can predispose one to an acceleration of problems if the knee is traumatized. Finally, he indicated that all of claimant's accidents and injuries contributed to his need for a knee replacement.¹¹

Claimant also saw Dr. Roger Hood who opined that with claimant's history of knee problems, the subsequent accidents that occurred after 1992 "could be" considered aggravations. He went on to testify that claimant's need for a new knee is something that would have been a culmination of all the various aggravations and accidents he has sustained over his lifetime.¹² But the ACL tear is the more significant injury.¹³

Claimant has the burden to prove his right to an award of compensation and prove the various conditions on which his right depends.¹⁴ In a post-award medical proceeding, an award for additional medical treatment can be made if the trier of fact finds that the need for medical care is necessary to relieve and cure the natural and probable consequences of the original accidental injury which was the subject of the underlying award.¹⁵

⁹ Randall Depo. at 8.

¹⁰ *Id.* at 10.

¹¹ *Id.* Depo. at 33.

¹² Hood Depo. at 16.

¹³ *Id.* at 21-22.

¹⁴ K.S.A. 44-501(a).

¹⁵ K.S.A. 44-510k(a).

The claimant has the burden of proof to establish that his need for post-award medical treatment is causally related to the injury suffered in the underlying accident. That burden remains the same even if claimant has suffered intervening accidents. It is simply a matter of proof. And although the passage of time and intervening accidents may increase the claimant's difficulty in establishing the causal connection, nonetheless, the causal connection must be proven.

The ALJ concluded "[t]he preponderance of the evidence failed to prove that left knee arthroplasty is medical treatment to cure and relieve the effects of the 1992 ACL tear. Too many years and other injuries have intervened, and contributed to the need for arthroplasty."¹⁶ Accordingly, he denied claimant's request for post-award medical benefits in the form of a knee replacement.

The Board has considered the parties' evidence and arguments as well as the ALJ's reasoning and concludes the ALJ's findings should be affirmed. While there is medical testimony that the 1992 ACL tear was the most significant event, the difficulty is that the very same medical testimony establishes that the subsequent events in 1998, 2002 and 2004 contributed to and made his condition worse. No physician testified that irrespective of those subsequent events, claimant would have, as a natural and probable result, required a knee replacement as a result of the 1992 injury. Moreover, claimant went a significant period of time, from 1993 to 1998, where he required no medical treatment for his knee complaints and continued to work without incident. Based upon this record, the Board finds claimant failed to establish that claimant's present need for a knee replacement is the direct, natural and probable consequence of his 1992 injury.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Post Award Medical Award of Administrative Law Judge Kenneth J. Hursh dated August 4, 2006, is affirmed.

¹⁶ ALJ Award (Aug. 4, 2006) at 4.

IT IS SO ORDERED.

Dated this _____ day of October, 2006.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

DISSENT

The undersigned Board Member respectfully dissents from the majority's decision. This member would reverse the ALJ's decision and grant claimant's request for the knee replacement surgery.

"Every natural consequence of a compensable injury is also compensable, even a new and distinct injury, if it is a direct and natural result of the original compensable injury".¹⁷ Dr. Browne testified as follows:

Q. And I think you testified earlier, correct me if I'm wrong, has Mr. Kubicki's ACL ligament deteriorated since the surgery?

A. I think it has by my clinical exam. I think the knee feels looser to me, so I don't think it's probably working and it's not probably a very functional anterior cruciate ligament.

Q. Is that the primary reason why he needs a knee replacement?

A. No. I think the primary reason why is that the die is cast in stone and he got hurt.

¹⁷ *Logsdon v. Boeing Co.*, Docket No. 94,206, 128 P.3d 430 (Kansas Court of Appeals decision filed Feb. 17, 2006).

Q. Which incident?

A: Whichever injury which I thought was with the Johnson Control Company in 1992 was the injury that caused the anterior cruciate tear.¹⁸

Based upon this testimony I would find that there is substantial competent evidence to find the claimant's present need for knee replacement surgery is the natural and probable result of the 1992 accident and would, therefore, grant claimant's request.

BOARD MEMBER

c: Stephanie J. Haggard, Attorney for Claimant
Michelle Daum Haskins, Attorney for Respondent and its Insurance Carrier
Dennis L. Horner, Attorney for the Workers Compensation Fund
Kenneth J. Hursh, Administrative Law Judge

¹⁸ Browne Depo. at 14.